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PTO/SB/61 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031  
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)  
BU9-98-183-US2

First Named Inventor: David Agnello et al.

Art Unit: 2811

Application Number: 09/939,895

Examiner: Hung K. Vu

Filed: 08/27/2001

Title: WET CLEANS FOR COBALT DISILICIDE PROCESSING

**RECEIVED**

SEP 10 2004

**OFFICE OF PETITIONS**

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703)305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

Small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(l)) Applicant claims small entity status..  
See 37 CFR 1.27.

Other than small entity - fee \$ 110.00 (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of

Notice of Appeal \_\_\_\_\_ (identify the type of reply):

has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

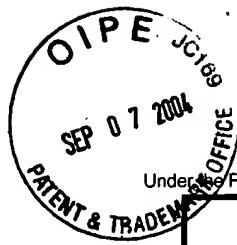
has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

(Page 1 of 3)

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

09/09/2004 WABDEL1 00000038 090456  
110.00 UP  
09339895  
01 FC:1452

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

09/02/2004

Date

Jack P. Friedman

Signature

44,688  
Registration Number, if applicable

Jack Friedman  
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

The U.S. Patent and Trademark Office issued an Advisory on 09/02/2003. The Advisory was not responded to because it was not received by our office.

May 13, 2004. A support staff member periodically checks file wrappers of open cases. She noticed there was no communication from the Patent and Trademark Office following the Response filed 07/31/2003 to the Final Office Action dated 06/04/2003. We checked the PAIR System and saw an Advisory had been issued 09/02/2003.

May 16, 2004. The support staff person called International Business Machines, the Assignee of the application, to see if the Advisory had been mistakenly sent to them. They had received no correspondence from the Patent and Trademark Office.

May 27, 2004. Calls were placed to Hung Vu, Supervisor Thomas and Eddy Lee of your Office to request a copy of the Advisory.

June 1, 2004. Mr. Eddy Lee called and said Examiner Vu now had the case and would call us for a fax number to send us the Advisory.

June 2, 2004. We received the faxed Advisory and saw it for the first time.

Exhibit 1: A copy of the front of our file folder for this docket showing the Advisory was not received and entered until after we had talked with Mr. Eddy Lee, from your office, in June.

Exhibit 2: Informal notes in the file for this docket, made by support staff, documenting the attempt to obtain a copy of the Advisory from the Patent and Trademark Office after we knew it had been issued.

Exhibit 3: A copy of the E-mail sent by the Applicant's Representative to the Assignee, IBM, mentioning the circumstances of the case and mentioning that the Applicant's Representative has authorization from the Assignee to proceed with the case.

*(Please attach additional sheets if additional space is needed.)*

## Exhibit 1

FILING DATE	
<u>08/27/2001</u>	
PATENT	
JAF/RK Bill Sauer (238m-1521)	

## LARGE Entity\*

**SERIAL NUMBER**

ROOM .....

**FILING DATE**

08/27/2001

# APPLICATION FOR LETTERS PATENT

INVENTOR Paul D. Agnello et al.

## IMPROVEMENTS \_\_\_\_\_

# — = = = ACTIONS = = = —

8/27/01	Provisional filed					
10/3/01	Filing Receipt					
2/1/02	Notice of Publication of Application					
10/2/02	Restriction Mail Date					
10/16/02	SBM filing response					
1/10/02	Office action mail date					
1/22/03	File Response + drawing copy.					
6/4/03	Final Office Action Mail Date					
7/31/03	File Response					
6/21/04	Advisory Action faxed from Examiner W					

**Allowed** .....

Letters Patent No. .....

**Final Fee Due.....**

# Exhibit 2

May 16, 2004

IBMBURL.7521

Mary Ann said the last action they have recorded is the 7-31-03 Amendment.

They did not get the Advisory mentioned on the Pair System.

We are to contact the PTO and follow up on this case.

Betty

5-27-04

- Phone number for Hung Vu. = 571-272-1466. He does not have the case right now.
- Left message with Supervisor Tom Thomas to call and tell us what to do to get the Advisory we never got. (Through Customer Service 571-272-2815)
- Tom Thomas no longer his supervisor.  
1-04 Mr. Eddy Lee is now the supervisor. 571-272-1732.  
Mr. Lee called and said the Examiner now has the case and will call us for our fax number; will fax the advisory so we can keep the case pending.
- 2 Examiner Vu sent Advisory and said we needed to petition to withdraw abandonment (he was hard to understand - that's what we think he said). We don't know how we can withdraw abandonment when we haven't received Abandonment Notice.
- 3 Called Eddy Lee - Voice Mail.

## Jack Friedman

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**From:** Jack Friedman  
**Sent:** Tuesday, July 20, 2004 3:52 PM  
**To:** 'wsabo@us.ibm.com'  
**Subject:** BU9-98-183-US2 (our docket IBM-7521)

Bill,

In your absence, we received authorization today from Richard Kotulak to take action on a case having complex circumstances. The Examiner mailed an Advisory Action on 09/02/2003 in relation to a final office action mailed 06/04/2003. We did not receive the Advisory Action and the case is therefore abandoned even though we have not yet received a Notice of Abandonment. We need to file a petition to revive the case and we (Schmeiser, Olsen & Watts) are responsible for the petition fee. However, we need to file a response to the Advisory Action along with the petition. Based on the circumstances, the most appropriate response is a Notice of Appeal. A complex aspect of the circumstances is that the USPTO cannot locate its file wrapper for this case. I can discuss the circumstances with you when you return. Meanwhile, Richard Kotulak has authorized us to file a Notice of appeal along with the petition.

Jack

#14

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO  
THE BOARD OF PATENT APPEALS AND INTERFERENCES (Large Entity)**

Docket No.  
BU9-98-183-US2

In Re Application Of: **SEP 07 2004**  
David Agnello et al.



Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/939,895	08/27/2001	Hung Vu		2811	4105

Invention:

**WET CLEANS FOR COBALT DISILICIDE PROCESSING**

**COMMISSIONER FOR PATENTS:**

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated **06/04/2003** finally rejecting Claim(s) **27, 33,34 and 39-44**.

The fee for this Notice of Appeal is: **\$330.00**

- A check in the amount of the fee is enclosed.
- The Director has already been authorized to charge fees in this application to a Deposit Account.
- The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **09-0456**.
- Payment by credit card. Form PTO-2038 is attached.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

09/03/2004 WABDEL1 00000038 090456 09939895

02 FC:1401 330.00 DA

Jack P. Friedman

*Signature*

Dated: **09-02-2004**

Jack Friedman  
Reg. No. 44,688  
SCHMEISER, OLSEN & WATTS  
3 Lear Jet Lane, Suite 201  
Latham, NY 12110  
(518) 220-1850

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)].  
(Date) **09-02-04**

*Betty Zuelsdorf*

*Signature of Person Mailing Correspondence*

**Betty Zuelsdorf**

*Typed or Printed Name of Person Mailing Correspondence*

CC: